(1)

Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No. _____

In The

Supreme Court of the United States

STEVEN J. LIDDANE; JEAN L. LIDDANE,

Petitioners

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Third Circuit

PETITION FOR A WRIT OF CERTIORARI

Steven J. Liddane, pro se
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QUESTIONS PRESENTED

1. Does the Code of Federal Regulations (CFR) derive its contents from the United States Code (U.S.C.) and, as such, must not conflict with the United States Constitution?

2. If the Internal Revenue Code is derived from the CFR, does it have to follow the same regulations as the CFR and not conflict with the United States Constitution?

3. Is it true that the statutory Notice of Deficiency issued to the petitioners in this case is required by law to clearly and unequivocally state the applicable statute which not only imposes but makes the petitioners liable for the stated tax under U.S.C Title 26, such as it does with several other sections under the same Title, and thus conflict with several prior decisions by this Court requiring "clear and unequivocal language", Spreckels Sugar Refining Co. v. McLain, 192 U.S. 397 (1903)?

4. Is it true that Congress has enacted laws, which have become the Titles contained in the United States Code, and that these laws must not go against the meanings set forth in the United States Constitution?

5. Is the United States Constitution the "Law of the land", of the United States of America?

6. Is it true that the Internal Revenue Code is Title 26 of the United States Code and, as such, must not go against the meanings set forth in the Constitution?

7. Did the courts' interpretation of the existing internal revenue regulations, which are written based on the U. S.C., correctly apply them, which is the very basis of our case, when in fact the Notice of Deficiency in question is derived from the notion that we, the petitioners, are liable for the payment of a tax, yet, it is a fact, that the Notice of Deficiency contains no reference to the

regulation that makes us liable for a tax?

8. Since there is no liability for tax, can there be penalties, interest, or other similar charges of fees since they are all based on a computation of a supposed tax?

9. Is it true that, when the words include, includes, and including are used in a statute, only those things listed after the word include (or its derivatives), or within the EXACT SAME meaning are to be a part of that definition? [emphasis added]

10. Is it true that, in statutory construction, a word means EXACTLY what is written and cannot be expanded to other things? [emphasis added]

11. Is it true that, when a regulation is codified, it is required that all legal terms be specifically defined to avoid being challenged and "voided for vagueness"? [emphasis added]

12. Is it true that, in 16A AM Jur 2d. Constitutional Law, § 818, Definiteness or Vagueness of Laws, Regulations and Orders, it states: "It is a general principle of statutory law that a statute must be definite to be valid"? [emphasis added]

13. Is it true that, in defining the words "include" and "including", the Supreme Court ruled as follows:

> "The ordinary significance of the terms, as defined by the dictionaries, both Webster and the Standard, is to confine within; to hold; to contain; to shut up; embrace; and involve. Include or the participial form thereof, is defined to comprise 'within'; 'to hold'; 'to contain'; 'to shut up'; and synonyms are 'contain'; 'enclose'; 'comprehend'; 'embrace'." Montillo Salt Co. v. Utah, 221 U. S. 452, at 455, 466. ? [emphasis added]

14. Is it true that, in the Supreme Court case of Gould v. Gould, 245 U.S. 151, at 153, the Court stated the following:

> "In the interpretation of statutes levying taxes, it is the established rule not to extend their provisions by implication beyond the clear import of the language used, or to enlarge their operations so as to embrace matters not specifically pointed out. In case of doubt they are construed most strongly against the government and in favor of the citizen."? [emphasis added]

15. Is it true that, on pages 3 and 4 of Ms. Carol Barthel's "Appellee's Jurisdictional Memorandum and Motion for Summary Affirmance", she states that the court and the Commissioner's counsel had provided to us the following court cases, reminding us that the Tax Court had imposed a penalty against the taxpayer under Code § 6673 because of the frivolousness of the taxpayers' arguments?

16. Is it true that in that letter, she quotes from the letter that the taxpayers were notified the following: "as you can see by reading these cases, your objections to paying taxes are clearly frivolous and, even more to the point, have been repeatedly rejected by the courts"?

17. Is it true that, in the Internal Revenue Code, "Subchapter B - Assessable Penalties" is where we find § 6673, "Sanctions and costs awarded by courts", and wherein, we have to begin with § 6671, "Rules for application of assessable penalties"? [emphasis added]

18. Is it true that, in the Internal Revenue Code, § 6671(b) Person defined states the following: "The term 'person' as used in this subchapter, includes an officer or employee of a corporation, or a member or employee of a

partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs"? [emphasis added]

19. Is it true that, to find "which the violation occurs", we go to Internal Revenue Code § 6672 "Failure to collect and pay over tax, or attempt to evade or defeat tax", which reads:

> "(a) General rule. Any person required to collect, truthfully account for, and pay over any tax imposed by this title who willfully fails to collect such tax, or truthfully account for and pay over such tax, or willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty equal to the total amount of the tax evaded, or not collected, or not accounted for and paid over."? [emphasis added]

20. Is it true that, in the clarification of the word include (or its derivatives), when the words include, includes, and including are used in a statute, ONLY those things listed after the word include (or its derivatives), or within the EXACT SAME meaning are to be a part of that definition? [emphasis added]

21. Is it not true that, when in statutory construction we apply the word "only" after the word "include", we find that § 6671(b) Person defined, includes [only] an officer or employee of a corporation, or a member or employee of a partnership, who as such officer, employee, or member is under duty to perform the act in respect of which the violation occurs? [emphasis added]

22. Is it true that, this violation is spelled out in § 6672, as follows:

"This person who is only an officer or employee of a corporation, or a member or employee of a partnership, who as such officer, employee, or member is under duty to collect, truthfully account for, and pay over any tax imposed by this Title who willfully fails to collect such tax, or truthfully account for and pay over such tax, or willfully attempts in any manner to evade or defeat any such tax or payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty equal to the total amount of the tax evaded, or not collected, or not accounted for or paid over." ? [emphasis added]

23. Is it true that we, the appellants, are not a "person" or "persons" defined in this subchapter, and we do not collect and pay over taxes on behalf of any corporation, or partnership or membership of any organization, and we are not under any duty to collect, truthfully account for and pay over such tax for anyone or any "person", and therefore this subchapter does not apply to us?

24. Is it true that, in [the Internal Revenue Code] § 6673. Sanctions and costs awarded by courts. Damages Assessable for instituting proceedings before the court primarily for delay, etc., it states:

a.) In General.

Whenever it appears to the Tax Court that proceedings before it have been instituted or maintained by the taxpayer primarily for delay, that the taxpayer's position in such proceeding is frivolous or groundless, or that the taxpayer unreasonably failed to pursue available administrative remedies, damages in an amount not in excess of $5,000 shall be awarded to the United States

by the Tax Court in its decision."? [emphasis added]

25. Is it true that, considering that subchapter B does not in any way, shape or form relate to [the appellants], clearly then, § 6673 cannot be imposed on the appellants?

26. Is it true that, it was not ourselves who instigated this waste of the Tax Court's time; it was the Internal Revenue Service who decided to pursue this venue against us?

27. Is it true that the term "person", as used in this subchapter is the same in both § 6671 and § 6672, and would in turn be the same "person" that § 6673 would apply to?

28. Is it true that, in § 6671, in "person defined" it includes a "member of a partnership", that this member would have the duty to collect and truthfully account for, and pay over any tax imposed by this title, and that this "member" is a voluntary position, for which there is no payment for services, but in which this member is accountable and therefore penalties would apply?

29. Is it true that this further strengthens the fact that Subchapter B is in reference to those who have the responsibility to collect and pay over taxes on behalf of those who are required to file and pay taxes?

30. Is it true that our situation does not conform to this Subchapter B and any of its sections, and therefore, we cannot possibly be charged with frivolous or groundless proceedings merely instituted for delaying tactics?

31. Is it true that Ms. Carol Barthel pointed out on page 3 of her memorandum, the court and the Commissioner's counsel gave us the following cases:

1.) Cocozza v. Commissioner, T.C. Memo 1997-305 (Doc. 25 at 5).

2.) Talmadge v. Commissioner, T.C. Memo 1996-114, aff'd, 101 F.3d 695 (4th Cir. 1996).

3.) Greenberg v. Commissioner, 73 T.C. 806 (1980).

4.) Steele v. Commissioner, T.C. Memo. 1997-307 (Doc. 25 at 5).

to read in hopes of swaying us to drop our case and pay said taxes and penalties?

32. Is it true that Ms. Carol Barthel states on page 3, "In each of these four cases, the Tax Court had imposed a penalty against the taxpayer under code § 6673 because of frivolousness of the taxpayer's arguments"?

33. Is it true that Cocozza v. Commissioner, Talmadge v. Commissioner, Greenberg v. Commissioner, and Steel v. Commissioner, in fact, have no bearing on our case?

34. Is it true that Treasury Definition 3980, Vol. 29, January-December, 1927, pages 64 and 65, defines the words "includes" and "including" as:

> "(1) to comprise, comprehend, or embrace... (2) to enclose within; contain; confine... But granting that the word 'including' is a term of enlargement, it is clear that it only performs that office by introducing the specific elements constituting the enlargement. It thus, and thus only, enlarges the otherwise more limited, preceding general language... The word 'including' is obviously used in the sense of its synonyms, comprising; comprehending; embracing."? [emphasis added]

35. Is it true that, on page 5 of Ms. Barthel's memorandum/motion, she says "In its Memorandum Opinion entered July 14, 1998, the court observed that '[no] facts are in dispute. [Taxpayers'] stipulation that [taxpayer] re-

ceived wages of $65,128 is all that is needed to decide this case in [the Commissioner's] favor.' (Doc. 25 at 15.) The court explained again why taxpayers' 'misguided arguments' (Doc. 25 at 9) were without merit, stating that taxpayers 'have been led astray by whoever has sold them the bill of goods that they have so laboriously written out and filed as their brief' (Doc. 25 at 13)"? [emphasis added]

36. Is it true that, having taken much of our "arguments" from the Internal Revenue Code book itself, and we have in fact been "led astray", is it not the Internal Revenue Code itself that has done this?

37. Is it true that for every court case Ms. Barthel has cited in her memorandum/motion against our case, we have cited an opposing one in our appeals brief?

38. Why are the Commissioner's cited cases supposed to be considered correct and those we cited incorrect?

39. Is it true that § 6653 of the Internal Revenue Code reads:

> 'Failure to pay stamp tax, (b) states: Any person (as defined in § 6671(b)) who (1) willfully fails to pay any tax imposed by this title which is payable by stamp, coupons, tickets, books, or other devices or methods prescribe by this title or by regulations under the authority of this title, or (2) willfully attempts in any manner to evade or defeat any such tax or payment thereof, shall in addition to other penalties provided by law, be liable for a penalty of 50 percent of the total amount of the underpayment of tax.' ? [emphasis added]

40. If in fact our arguments are frivolous, where in the Internal Revenue Code can we find a codified regulation that has been written in its statutory construction, with

words that mean EXACTLY what is written and that cannot be, or is not, expanded to other things, so that it is written in all legal terms that are specifically defined, to be used concerning the average working person, to avoid being challenged and "voided for vagueness"?

41. Is it true that the Internal Revenue Code Sections 6671, 6672, 6673, 6653(b), 6654(a), 6661(a), 61(a)(b), 62, 63(b), 71, and 101, which are all addressed in our appeals brief, make it clear, as they are specifically defined, with clear import of the language, do not have anything to do with us?

42. Are we to believe that the Internal Revenue tax system and the United States Code (USC), Title 26 [Internal Revenue Code] in particular, is not subjected to these rules, regulations and laws?

43. Are they [the IRS and US Tax Court] not subjected to the meanings of the rules and regulations in their own Code Book?

44. Are they [the IRS and US Tax Court] allowed to make up or change the rules as they go along to suit their own needs or agendas?

45. At what time did we receive a written statement from Judge Beghe that our position has been thoroughly discredited?

46. Is it true that we filed a 52 page brief containing 130 citations of statutes, regulations, cases and other material and 3 exhibits?

47. Is it true that Judge Beghe jumped over the issues we raised and placed us as tax protestors who did not merit answers?

48. When Judge Beghe points to Commissioner v. Glenshaw Glass Co., 348 U.S. 426 (1955) and General Am. Investors Co. v. Commissioner, 348 U.S. 434 (1955), is he

not referring to two corporations knowing that we are not a corporation entity; therefore not liable under the same regulations and laws?

49. Is it not true that Judge Beghe and all others concerned in this case have at no time given credence or answers to the questions we have asked concerning the IRS Mission Statement, H.R. 1226 Taxpayer Browsing Protection Act, and Dwight E. Avis; answers concerning how, where, when, and why these statements were made, and what relevance they have [to our case]?

50. Is it true that the Public Salary Tax of 1939 (the name later changed to the Internal Revenue Code of 1939) states: "The United States consents to the taxation of pay or compensation for personal services as a officer or employee of the United States"?

51. Is it true that the current Internal Revenue Code still gets much of its authority from the original 1939 Public Salaries Tax Act?

52. Is it true that 4 USCS @ 111 states: "The United States consents to the taxation of pay or compensation for personal service as an officer or employee of the United States, a territory or possession or political subdivision thereof, the government of the District of Columbia, or an agency or instrumentality of one or more of the foregoing, by a duly constituted taxing authority have jurisdiction, if the taxation does not discriminate against the officer or employee because of the source of the pay or compensation"?

53. When the Victory Tax was repealed, is it true that the following was stated: "56 Stat. 884 (Public Laws Ch. 2120, Section 6(a)), 5/29/44, 78th Congress, 2nd Session: "...at which time the individual citizens of the States were taken from voluntary federal jurisdiction and returned to their State Constitutional and Civil

Rights."?

54. Is it true that, in Flora v. U.S., 362 U.S. 145, it states: "Our system of taxation is based on voluntary assessment and payment, not upon distraint."?

55. Is it true that, as it was ruled in Redfield v. Fisher, 292 P. 813, 819 (1930):

> "The individual, unlike the corporation, cannot be taxed for the mere privilege of existing. The corporation is an artificial entity which owes its existence and charter powers to the state; but the individual's right to live and own property are natural rights for the enjoyment of which an excise cannot be imposed." ?

56. Is it true that, it was ruled in Peck v. Lowe, 247 U.S. 165:

> "Neither can the tax be sustained on the person, measured by income. Such a tax would be, by nature, a capitation rather than an excise...The Sixteenth Amendment does not extend the power of taxation to new or exempted subjects."?

57. Is it true that, it was ruled in Flint v. Stone Tracy Co., 220 U.S. 107 (1911):

> "Duties and imposts are terms commonly applied to levies made by governments on the importation or exportation of commodities. Excises are taxes laid upon the manufacture, sale, or consumption of commodities within the country, upon licenses to pursue certain occupation, and upon corporate privileges."?

58. Is it true that in Murdock v. Pennsylvania, 319 U.S. 105 at 113, it states: "A State (or the United States) may not

impose a charge for the enjoyment of a Right granted by the Federal Constitution."?

59. Is it true that a direct tax is a tax on an ownership interest which the owner cannot pass on, while an indirect tax is on an event where the transaction and the impact of the tax can be passed on, in whole or in part, to others?

60. Is it true that the United States Supreme Court said in 1916 that the 16th Amendment did not change the Constitution because of the fact that Article I, Section 2, Clause 3, and Article I, Section 9, Clause 4 were not repealed or altered; the United States Constitution cannot conflict with itself?

61. Is it true that it was established in the Constitutional Convention of 1787 that the Supreme Court of the United States would have the power of "judicial review", i.e., the power to declare laws passed by the United States Congress to be null and void if such a law or laws were in violation of the Constitution, to be determined from the original intent as found in Madison's Notes recorded during the Convention, the Federalist Papers, and the ratifying conventions found in Elliotts' Debates?

62. Is it true that in 1894, Congress passed an ACT to impose a tax on the incomes of citizens and resident aliens of the United States, and that the constitutionality of the ACT was challenged in 1895 (Pollock v. Farmer's Loan & Trust Co., 157 U.S. 429 (1895)) and the Supreme Court said the law was unconstitutional because it was a direct tax that was not apportioned, as the Constitution required?

63. Is it true that in 1916, in the Brushaber v. Union Pacific Railroad Co., 240 U.S. 1 (pg. 16) case, the Court said that the 16th Amendment merely prevented the income

duty from being taken out of the category of indirect taxation, stating in its Decision:

> "Income has been taken to mean the same thing as used in the Corporation Excise Tax of 1909 (36 Stat. 112). The worker does not receive a profit or a gain from his/her labors - merely an equal exchange of funds for services. 'The conclusion reached in the Pollock case did not in any degree involve holding that income taxes generically and necessarily came within the class of direct taxes on property, but on the contrary recognized the fact that taxation on income was in its nature an excise entitled to be enforced as such...'." ?

64. Is it true that the Brushaber v. Union Pacific Railroad Co. case plainly states that the income tax is an excise tax and that it settled once and for all the fact that the 16th Amendment to the Constitution did not give Congress any more power?

65. Is it true that in Stanton v. Baltic Mining Co., 249 U.S. 112 (1916), the Supreme Court settled that the 16th Amendment "conferred no new power of taxation but simply prohibited the previous complete and plenary power of income taxation possessed by Congress from the beginning from being taken out of the category of indirect taxation to which it inherently belonged." ?

66. Is it true that we are entitled to rely on the original Supreme Court ruling that the 16th Amendment gave no new taxing powers to the government, since this original decision has never actually been overturned?

67. Is it true that when a person goes through the naturalization process to become a citizen of the United States, and oath must be taken, in accordance with 8 USC Sec. 1448, Oath of Renunciation and Allegiance which states,

i.e., that to be a citizen of the United States is to support the Constitution of the United States, to defend it and the laws of the United States against all enemies, foreign and domestic? [emphasis added]

68. Is it not true that, in Hale v. Henkel, 201 U.S. 43 at 47 (1905), "an individual may stand upon his constitutional rights as a citizen"?

69. Is it true that, in Helvering v. Edison Bros. Stores, 133 F.2d 575, it was ruled: "The Treasury Department cannot, by interpretive regulations, make income of that which is not income within the meaning of the revenue acts of Congress, nor can Congress, without apportionment, tax as income that which is not income within the meaning of the Sixteenth Amendment."?

70. Is it true that, according to IRS Publication 1140, "decisions of the courts other than the Supreme Court are binding on the Commissioner of Internal Revenue Service only for a particular taxpayer and for the years litigated, and thus decisions of lower courts do not require the IRS to alter its position for all other taxpayers."? [emphasis added]

71. Is it true that, according to IRS Publication 556, "[the IRS] follows Supreme Court decisions."?

72. Is it true that, in Olmstead v. United States, 277 U.S. 438 (1982), Justice Brandeis said:

> "Decency, liberty and security alike demand that government officials be subject to the same rules of conduct that are commands of the citizens. In a government of laws, existence of government will be imperiled if it fails to obey the law scrupulously. Our government is the potent, omnipresent teacher. For good or ill, it teaches the people by example. Crime is contagious. If the govern-

ment becomes a lawbreaker, it breeds contempt for law; it invites every man to be a law unto himself. It invites anarchy."?

73. Is it true that the last sentence of the "Internal Revenue Service Mission" states: "Encourage and achieve the highest possible degree of voluntary compliance in accordance with the tax law and regulations"; and not in accordance to their own interpretation of the regulations to the exclusion of all others? [emphasis added]

74. Is it true that the IRS and lower courts usually ignore classic court decisions, including Supreme Court rulings, which is the source of conflict within the courts and the IRS, and since the cases we are citing have never been overturned, as far as we know, as of the date of this document and the lower courts conflict on these issues, our right to rely upon the decisions of the Supreme Court cannot be questioned, and since due process is violated when the government itself creates uncertainty in the law, we have the right to make a determination from reliable sources like the Supreme Court?

75. Is it true that, in U.S. v. Critzer, 498 F.2d 1160, 4th Circ. (1974) it states: "Due process is violated when the government itself creates uncertainty in the law"?

76. Is it true that in Spreckels Sugar Refining Co. v. McLain, 192 U.S. 397 (1903), it states"...keeping in mind the well settled rule that the citizen is exempt from taxation unless the same is imposed by clear and unequivocal language, and that, where the construction of the tax law is doubtful, the doubt is to be resolved in favor of those upon whom the tax is sought to be laid." ?

77. Is it true that in U.S. v. Minker, 350 U.S. 179 at 187, it states: "Because of what appears to be a lawful command on the surface, many citizens, because of their respect for what only appears to be law, are cunningly co-

erced into waiving their rights due to ignorance."?

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STATEMENT OF INTERESTED PARTIES

Petitioner Steven J. Liddane and Petitioner Jean L. Liddane were the petitioners before the U.S. Tax Court and the appellants before the U.S. Court of Appeals for the Third Circuit. Petitioners are individual, natural born citizens of the United States of America.

Respondent Commissioner of Internal Revenue was the respondent before the U.S. Tax Court and the appellees before the U.S. Court of Appeals for the Third Circuit.

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully petitions for a writ of certiorari to review this case decided below by the United States Court of Appeals for the Third Circuit.

REPORTED OPINIONS

The opinion of the United States Court of Appeals for the Third Circuit is an unpublished opinion cited as Docket No. 99-5499 (2000) and reported as Steven J. Liddane & Jean L. Liddane v. Commissioner of Internal Revenue. The opinion of the United States Tax Court is an unpublished opinion cited as T.C. Memo. 1998-259 (1998) and reported as Steven J. & Jean L. Liddane v. Commissioner of Internal Revenue.

STATEMENT OF JURISDICTION

The judgement of the United States Court of Appeals for the Third Circuit ("the Court of Appeals") was entered on January 14, 2000, with subsequent petition for panel rehearing denied on March 14, 2000. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article VI, Clause 2 of the United States Constitution provides that:

> "The Constitution...shall be the supreme Law of the land."

Article I, Section 8, Clause 1 of the United States Constitution provides that:

> "The Congress shall have power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States."

Article I, Section 2, Clause 3 of the United States Constitution provides that:

> "Representatives and direct taxes shall be apportioned among the several states which may be included within this Union, according to their respective number..."

Article I, Section 9, Clause 4 of the United States Constitution provides that:

> "No capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration hereinbefore directed to be taken."

Sutherland's Rules of Statory Construction
Code of Federal Regulations
United States Code

BEST AVAILA

STATEMENT OF THE CASE

In his reported opinion, Judge Beghe does not address many of the pertinent legal issues raised in our seriatim brief to the Tax Court, nor did he clarify the exact United States Code statute which, clearly and unequivocally, establishes our liability to pay taxes as purported in the Notice of Deficiency. His failure to respond leads us to believe he did not read the entire brief. He merely lumped us in with other "tax protestors" when, in fact, we are not any such thing. How is it that we are being imposed with penalties that clearly do not apply to us? This legitimate issue has not been addressed. We want legitimate answers from the Internal Revenue Service to our questions and a fair assessment of the raised issues by the Court; one which takes into consideration all the issues raised in our brief to the Court, and not one which hastily and improperly places us in the category of "tax protestors", which we are not.

At this point we remind the Court that in statutory construction, a word means EXACTLY what is written and cannot be expanded to other things. When a regulation is codified, it is required that all legal terms be specifically defined to avoid being challenged and "voided for vagueness." 16A AM Jur 2d. Constitutional Law § 818 Definiteness or Vagueness of Laws, Regulations and Orders, states:

> "It is a general principle of statutory law that a statute must be definite to be valid." [emphasis added]

A further reminder, in defining the words "include" and "including", the Supreme Court, ruled as follows:

> "The ordinary significance of the terms, as defined

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> by the dictionaries, both Webster and The Standard, is to confine within, to hold; to contain; to shut up; embrace; and involve. Include or the participle form thereof, is defined to comprise 'within': 'to hold'; 'to contain'; 'to shut up'; and synonyms are 'contain'; 'enclose'; 'comprehend'; 'embraced'." Montillo Salt Co. v. Utah, 221 U.S. 452, at 455, 466.

More importantly, to go along with all of this, in the Supreme Court case of Gould v. Gould, 245 U.S. 151, at 153, the Court stated the following:

> "In the interpretation of statutes levying taxes, it is the established rule not to extend their provisions by implication beyond the clear import of the language used, or to enlarge their operation so as to embrace matters not specifically pointed out. In case of doubt they are construed more strongly against the government and in favor of the citizen."

How much plainer can it be? The bottom line concerning Subchapter B, Sections 6671, 6672 and 6673 is that the Internal Revenue Service cannot by legal authority extend this part of the Internal Revenue Code to include ourselves. And considering there is very definite "doubt" as to whether we are included in this section, as is stated in Gould v. Gould, 245 U.S. 151, at 153, "In the interpretation of statutes levying taxes, it is the established rule not to extend their provisions by implication beyond the clear import of the language used, or enlarge their operations so as to embrace matters not specifically pointed out." And it further makes very clear, "In case of doubt, they are construed most strongly against the government and in favor of the citizen." We, the petitioners, are clearly the citizens

in this regard.

In Cocozza v. Commissioner, T.C. Memo. 1997-305

On page two of the T.C. Memo. is the following statement made by Judge Beghe:

"Petitioner was a resident of Port Richey, Florida, at the time of filing her petition. Paragraph 4 of the petition, in which we would expect to find assignments of error, states in its entirety as follows: 'Petitioner did not engage in any income excise taxable activities during the year in question, and Title 27 CFR is inapplicable to deficiency assessments herein.' The petition neither contains a paragraph 5 nor alleges any facts on which petitioner bases her position in this case."

And on page five is the following footnote by Judge Beghe:

"Petitioner's Memorandum of Law makes no mention of the argument in her petition regarding Title 27 C.F.R., and we deem it to have been abandoned."

We guess this petitioner left out some very important points in her petition. Since she did not have a "paragraph 5" nor 'alleged any facts on which petitioner bases her position in this case", or "makes no mention of the argument in her petition regarding Title 27 C.F.R.", therefore "deeming it to have been abandoned", she did not provide creditable facts.

However, we would like to impress here that we have presented creditable facts to base our position on and

these were not addressed by Judge Beghe in his Memorandum of Opinion concerning our case.

Since this other case, given to us by Judge Beghe, does not go into further depths concerning how she came to be in this court, we can only surmise, that if she was a "person included" in Subchapter B, Sections 6671, 6672 and 6673, that she would be liable for these taxes and these penalties. However, if she were not, then as is with us, she would clearly not be liable for penalties under section 6673. At any rate, this case has absolutely no bearing on ours.

We have never received an answer from the Internal Revenue Service when we asked them to identify the specific statute or code section making us liable for any tax. The notice of deficiency does not identify it, which is why we believe the notice is invalid and is why we petitioned the Tax Court to rule on the matter, only the Tax Court apparently presumed the liability existed simply because the IRS says so. In the absence of proof of liability, there is no basis for the notice.

In Greenberg v. Commissioner, 73 T.C. 806 (1980), the petitioner filed in protest to his taxes being used for war purposes. He states, "it would involve me in a conflict of conscience and violate my moral and religious beliefs as a conscientious objector to war."

To this, we state: We have no problems with collecting a given tax for the purpose of defending our country. We do not protest taxes being used for this purpose; therefore this case does not apply to our position.

However, this still does not come under the jurisdiction of Subchapter B, Sections 6671, 6672 and 6673, which must be used together in order to apply them correctly, so as not to extend its meaning (provisions) by implication beyond the clear import of the language used, or enlarge their operations so as to embrace matters not specifically pointed

out. Gould v. Gould, 245 U.S. 151, at 153.

Our question here is, as is with all of these cases, why is Subchapter B, § 6673 being applied to us when clearly this section is not relevant? If taxes are not voluntary and are mandatory, why did the U.S. Legislature neglect to include a section in the Internal Revenue Code for the purpose of establishing a collection procedure enabling the collection of this type of penalty?

In Steele v. Commissioner, T.C. Memo. (1997-307): The issue in this case was whether the petitioner was liable for taxes on non-employee compensation and interest income earned by him, i.e. life insurance benefits and interest on savings.

We do not have a problem with the decision in this case. § 61 Gross Income defined, under (a)(10) and (a)(4), it is clearly stated interest and income from life insurance and endowment contracts. However, this again has no bearing on our case. We have no dispute concerning interest-bearing accounts. Our situation solely hinges on "Wages/ Income" paid to us. Therefore, this case has no relation to our situation.

In Talmadge v. Commissioner, T.C. Memo. 1996-114, this case concerned non-employee compensation of $24,801.00 from Matol Botanical International, Montreal, Canada, and dividend income of $60.00 from a growth fund. He claimed he was entitled to deductions for business expenses and itemized deductions sufficient to eliminate or greatly reduce any tax liability, but did not allege any facts to support these claims, for his employment at UPS.

He also used several delaying tactics. He made efforts to file a return under § 83 that would obviate any taxable gain from his services, all of which purportedly led petitioner to conclude that his receipts were not income and

that the Court had no jurisdiction over the case.

None of the above circumstances relate to our case at hand. We have not instigated any delaying tactics at any time. We have instead asked legitimate questions at various levels of the Internal Revenue Service and received no answers. We have, however, encountered the eternal "PASS THE BUCK" syndrome.

Carol Barthel states on page 10 of her motion/ memorandum: "In short, there is no basis upon which taxpayers can demonstrate error in the Tax Court's grant of summary judgement to the Commissioner."

Let us state clearly: AT NO TIME during the course of this entire case, has the Commissioner given factual answers to our legitimate questions regarding the legality of their demands for money. Instead, the Commissioner has employed every tactic possible to avoid answering our questions and, generally, wasting the court's time.

We had already submitted our brief to the Ninth Circuit when the Commissioner's counsel submitted the motion to change venue to the Third Circuit. When we received the order from the Ninth Circuit Court of Appeals, granting said "unopposed motion...", we had already submitted a motion opposing the change in venue, and we contacted the Clerk's office and they advised us they had received no motion from us opposing the respondent's motion. We then proceeded to furnish proof, by way of U.S. Postal Service Certified Mail receipt showing the Clerk's office signature of receipt, and ask for reconsideration of the order moving venue, which they did. Although the Ninth Circuit Court of Appeals did not change its mind in its subsequent order, we have abided by its decision and proceeded to contact the Court of Appeals for the Third Circuit.

We have asked for this appeal for the Court of Ap-

peals to carefully review the tax court's judgement in relation to various key areas of USC Title 26, the misapplication of the tax itself as presented in the notice of deficiency, and possible violations of our constitutional rights. The tax court overlooked these specific areas of our brief because, quite simply, they were not addressed or answered in Judge Beghe's memorandum of opinion, leading us to strongly believe the judge's decision was motivated by prejudiced bias and not based on facts of law.

To illustrate our point, suppose there was a statutory regulation that stated, "There is hereby imposed a tax on all types of fruits including apples, oranges and peaches," that definition might be expanded to also include plums and pears but it certainly could not be expanded to include radishes and carrots, which are not within the meaning of the term defined as "fruits." To avoid vagueness in statutory construction, if the meaning of the term is "expansive" rather than "inclusive", the words, "including, but not limited to" are generally used.

Further, Treasury Definition 3980, Vol. 29, January-December, 1927, pages 64 and 65, defines the words "includes" and "including" as:

> "(1) to comprise, comprehend, or embrace... (2) to enclose within; contain; confine... But granting that the word 'including' is a term of enlargement, it is clear that it only performs that office by introducing the specific elements constituting the enlargement. It thus, and thus only, enlarges the otherwise more limited, preceding general language... The word 'including' is obviously used in the sense of its synonyms, comprising; comprehending; embracing."

With this in mind, how can Sections 6671, 6672 and

6673 (keeping in mind 6673 cannot be used without 6671 and 6672) possibly be correctly enforced against ourselves? This is a very large error on the part of the Commissioner and the Tax Court.

If in fact our arguments are frivolous, where in the Internal Revenue Code can we find a codified regulation that has been written in its statutory construction, with words that mean EXACTLY what is written and that cannot be, or is not, expanded to other things, so that it is written in all legal terms that are specifically defined, to be used concerning the average working person, to avoid being challenged and "voided for vagueness"? As 16A AM Jur 2d. Constitutional Law § 818 Definiteness or Vagueness of Laws, Regulations and Orders, states: "It is a general principle of statutory law that a statute must be definite to be valid."

And let's remember Gould v. Gould, 245 U.S. 151, at 153:

> "In the interpretation of statutes levying taxes, it is the established rule not to extend their provisions by implication beyond the clear import of the language used, or to enlarge their operations so as to embrace matters not specifically pointed out. In case of doubt they are construed most strongly against the government and in favor of the citizen."

Therefore, Internal Revenue Code Sections 6671, 6672, 6673, 6653(b), 6654(a), 6661(a), 61(a)(b), 62, 63(b), 71, and 101, which are all addressed in our appeals brief, make it clear, as they are specifically defined, with clear import of the language, do not have anything to do with us.

Are we to believe that the Internal Revenue tax system and the United States Code (USC), Title 26 [Internal Revenue Code] in particular, is not subjected to these rules, regulations and laws? Are they [the IRS and US Tax Court]

not subjected to the meanings of the rules and regulations in their own Code Book?

The following is a statement made by Mr. Dwight E. Avis, former head of the Alcohol, Tobacco, and Firearms Division, Bureau of Internal Revenue, at the Internal Revenue Investigation Hearings before a Subcommittee on Ways and Means, House of Representatives, Eighty-Third Congress, First Session on Administration of the Internal Revenue Laws, United States Government Printing Office, 1953: "Let me point this out now: Your income tax is 100 percent voluntary tax and your liquor tax is 100 percent enforced tax. Now, the situation is as different as night and day. Consequently, your same rules just will not apply..."

H.R. 1226, the "Taxpayer Browsing Protection Act", in President Clinton's press statement, August 5, 1997, he states:

> "Our system of taxation relies heavily on taxpayers' voluntary compliance with their tax reporting obligation. Maintaining the confidentiality of the information submitted by taxpayers is critical to the operation of this system. If taxpayers do not believe that the Government is adequately safeguarding their personal financial information they may be less willing to supply that information in the future.
>
> Taxpayers have the right to expect that their returns and return information are, and will remain, confidential. Such information should be inspected or reviewed only for proper purposes, including tax administration, in accordance with the criteria established by law. It is my Administration's clear policy that unauthorized inspection of tax information will not be tolerated. This is a bipartisan issue on which everyone can agree: "browsing" taxpayer information is wrong, and we all condemn it."

Our President of the United States acknowledges in this statement that our system of taxation relies heavily on voluntary compliance and if we the taxpayers do not believe our personal financial information is being adequately safeguarded we may be less willing to supply that information in the future.

This certainly makes one stop and think. If income tax is mandatory for the average citizen of the United States, why is the President concerned that we might be less willing to voluntarily supply personal financial information in the future?

The "Internal Revenue Service Mission" states:

> "The purpose of the IRS is to collect the proper amount of tax revenues at the least cost to the public, and in a manner that warrants the highest degree of public confidence in our integrity, efficiency and fairness. To achieve that purpose, we will-. Encourage and achieve the highest possible degree of voluntary compliance in accordance with the tax law and regulations."

Please notice the last sentence, "Encourage and achieve the highest possible degree of voluntary compliance in accordance with the tax law and regulations."

As an historical note, when the Public Salary Tax Act of 1939 was passed (the name was later changed to the Internal Revenue Code of 1939), it clearly indicated that participation was by consent. The Public Salary Tax Act of 1939 states: "The United States consents to the taxation of pay or compensation for personal services as an officer or employee of the United States."

In fact, the current, 1996 Internal Revenue Code Still gets much of its authority from the original 1939 Public Salaries Tax Act. In the following quote, you can see how they still refer back to the 1939 statutes. In this statute they

are basically saying that if the 1954 or 1986 Internal Revenue Code doesn't have a section to replace an equivalent section in the earlier codes, then the earlier code sections are still applicable.

Title 26 U.S.C. Section 7851(e), Subchapter B - Effective Date and Related Provisions Applicability of Revenue Laws:

> "For the purpose of applying the Internal Revenue Code of 1939 or the Internal Revenue Code of 1954 to any period, reference in either such code to another provision of the Internal Revenue Code of 1939 or the Internal Revenue Code of 1954 which is not then applicable to such period shall be deemed a reference to the corresponding provision of the other code which is then applicable to such period."

Fifty years ago, even for the federal employees, the government knew that to avoid being unconstitutional direct taxation of this kind could only be done on a consenting basis, indicating a voluntary contractual agreement. The first time the wages of a private citizen were taxed was the passage of the Victory Tax of 1942 to support the war. The Victory Tax clearly shows its voluntary origins:

4 USCS @ 111:

> "The United States consents to the taxation of pay or compensation for personal service as an officer or employee of the United States, a territory or possession or political subdivision thereof, the government of the District of Columbia, or an agency or instrumentality of one or more of the foregoing, by a duly constituted taxing authority having jurisdiction, if the taxation does not discriminate against the officer or employee because of the source of the pay or compensation."

You can see that the income tax was voluntary even

more so in when the Victory Tax was repealed:

> "... at which time the individual citizens of the States were taken from voluntary federal jurisdiction and returned to their State Constitutional and civil rights."

"Voluntary compliance" pertains to everything connected with income taxes including the paying of tax, the furnishing of records, and even wage withholding. If the filing, paying and reporting of income taxes were mandatory, why would the government say that anything to do with it is voluntary?

No other government agency in the United States, that we are aware of, uses the word "voluntary" to describe a mandatory procedure. I believe it is negligent for a government agency to describe mandatory procedures using the word "voluntary", since the meaning of 'voluntary' is directly opposed to the intent of mandatory statutes. For example, the Department of Alcohol, Tobacco and Firearms uses mandatory language when expressing compliance with their statutes. If using the phrase voluntary compliance' was such a terrific strategy at encouraging compliance with mandatory laws, there is a good chance that other government agencies would be using it. The government actually does go out of its way to make laws and procedures as uniform as possible. In fact, there are some government commissions entirely devoted to creating more uniformity in government.

The Mission of the IRS is to help people understand their rights and responsibilities under the law. So they have a responsibility to communicate clearly to the public. The Internal Revenue Code is confusing enough without the IRS using unclear language. They have been using the word 'voluntary" for many decades in their publications. During that time, their best legal advisors have probably reviewed their use of the word "voluntary". Therefore, if

they keep using the word "voluntary", it is not unreasonable to believe that there is something "voluntary" associated with the filing of tax returns.

Mr. Avis wanted to show the subcommittee how the Alcohol, Tobacco and Firearms Division was a more important area of the Internal Revenue Service, because its taxes were mandatory. In his political position he inadvertently made the admission that income taxes are voluntary in order to underscore his point that the taxes associated with his area of enforcement were not voluntary. This was not some idle chatter by some guy in a diner. He was a highly educated, knowledgeable public servant telling the truth (under oath).

In Flora v. U.S., 362 U.S. 145, the Supreme Court ruled that, "our system of taxation is based upon voluntary assessment and payment, not upon distraint."

It was once well understood in America that people couldn't be taxed just because they exist. Taxes in America are supposed to apply only to "subjects" of government, in other words, corporations and other artificial "persons" created by government that exist as a privilege. In our country, the government is subject to the will of the "We the people." As a free people, we are generally exempt from the kinds of taxes, called direct taxes, that are imposed on subjects, which exist as a privilege granted, by government. This is a natural right of free people, not a privilege created by Congress.

In our system of written law, Congress may use a term to mean almost anything, as long as the law itself defines that meaning. When the written law explains the meaning of a term used in the law, standard English usage becomes irrelevant. For example, by the definition of 26 U. S.C. Section 7701(a)(1), the term "person" includes estates, companies and corporations. While no one would describe Wal-Mart as a "person" in everyday conversation, Wal-Mart

is a "person" under federal tax law. The legal use of a term is often significantly different from basic English, and therefore reading one section of the law alone can be very misleading. It is the language of the law we are concerned with here in this case.

In Sutherland's Rules of Statutory Construction 66.01, it states: "...it is a well settled rule that laws are to be strictly construed...Strict Construction is a way to assure that no taxes be enacted except by legislative authority." And at 66.03 it states: "The obligation to pay taxes arises only by force of legislative action."

Furthermore, "The Secretary of Treasury is bound by law, and although in the exercise of his discretion he may adopt necessary forms and modes of giving effect to the law, neither he nor those who act under him can dispense with or alter any of its provisions." Tracy v. Swartwout, 10 Pet (US) 80, 9 L ed 354.

"Gross Income" is defined in 26 U.S.C. Section 61 as "all income from whatever source derived." For the specifics about "income from sources" (emphasis added), the reader is repeatedly referred to Section 861 and following of the statutes and the related regulations. In the full version of Title 26 U.S.C. (with all notes and amendments), Section 61 itself has the following cross-reference: "Income from Sources - Within the United States, see Section 861 of this title. Without the United States, see Section 862 of this title." In addition, the indexes of the United States Code (although they vary somewhat in the exact wording) have entries such as: "Income tax Sources of income, Determination, 26 Section 861 et seq..., within the U.S., 26 Section 861."Section 861 itself is predictably titled "Income from sources within the United States,". This section is the first section of Subchapter N of the Code, entitled "Tax based on income from sources within or without the United States." This is the only section in the Index relating to income from

sources within the United States. As mentioned before, the statutes passed by Congress are interpreted and implemented by regulations published in the Code of Federal Regulations by the Secretary of the Treasury and the IRS must abide by these regulations.

It is explicitly clear and relevant to this case. You will find that at no time do we fall into any of the categories listed in Section 861 or Subchapter N, which in turn means we do not fall under Section 61 of the IRC nor Section 63 or Section 1. Nor do any of the aforementioned "sources" of income apply to United States citizens living and working within the United States. The Court is already aware that the Internal Revenue Code is adopted from the Code of Federal Regulations, which in turn comes from the United States Code, which must adhere to Constitutional law. Constitutional law is the LAW OF THIS LAND.

Consider the following: "The purpose of the Corporation Tax Act of August 5, 1909 is not to tax property as such, or the mere conversion of property, but to tax the conduct of the business of corporations organized for profit by a measure based upon the gainful returns from their business operations and property from the time the Act took effect...The Act employs the term "income" in its natural and obvious sense, as importing something distinct from principal or capital, and conveying the idea of gain or increase arising from corporate activities." Doyle v. Mitchell, 247 U. S. 179 (1918). Even before Title 26 or Title 27 were written, it was established here what the term "income" referred to. Further backing up the validity of the Code of Federal Regulations and United States Code and the relevance of the Constitution.

The 10th Amendment to the Constitution clearly states that Congress has legal power over only those few matters which the Constitution specifically puts under federal jurisdiction. Within the 50 States, Congress has control

over only those matters listed in Article I, Section 8 of the Constitution. This limitation was recently demonstrated by the "United States v. Lopez" case in 1995, in which the Supreme Court threw out the "Gun Free School Zone" law (18 USC § 922(q)) as unconstitutional, on the grounds that it was outside of Congress' enumerated powers described in Article I, Section 8. Not only did the court say this, but the lawyers on the *other* side tried to argue that the law was about regulating interstate commerce (which Article I, Section 8 puts under federal jurisdiction), demonstrating that they agreed that the law had to be based on something in Article I, Section 8.

The Brushaber v. Union Pacific Railroad, 240 U.S. 1, case decided January 24, 1916 (mentioned in Treasury Decision 2313) is often cited by the IRS as demonstrating that the income tax is Constitutional (which it is, because of its very limited legal application). What the IRS fails to mention, and what is not apparent from looking at the court's ruling in the case, is that the case concerned income from within the United States accruing to a nonresident alien, which is subject to the income tax. Treasury Decision 2313 makes this apparent.

> "Under the decision of the Supreme Court of the United States in the case of Brushaber v. Union Pacific Railway Co., decided January 24, 1916, it is hereby held that income accruing to nonresident aliens in the form of interest from the bonds and dividends on the stock of domestic corporations is subject to the income tax imposed by the act of October 3, 1913." [Treasury Decision 2313]

It was once well understood in America that people couldn't be taxed just because they exist. Taxes in America are supposed to apply only to "subjects" of government, in other words, corporations and other artificial "persons" cre-

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Another legal resource, which demonstrates the true applicability of the "income tax", is the annotated index of the United States Code. While there are different versions which vary somewhat in exact wording, under *"Income tax, citizens,"* only things such as citizens *"living abroad"* or *"about to depart from U.S."* are listed.

Both the indexes and the contents of "Internal Revenue Bulletins" (which contain rulings and decisions by the IRS regarding interpretation of the law) reinforce the conclusions of this petition. For example, the 1957-1960 cumulative bulletin has nine listings under "Citizens," every one of which deals with citizens being *outside* of the United States. This same bulletin, under *"Income - Source,"* has 35 listings, all of which deal with specific issues related to *international* commerce, with one exception; and that exception again reinforces the significance of Part I of Subchapter N, and the related regulations. The bulletins show similar patterns year after year, from 1913 (when the basis of the current federal income tax was written) to the present.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted. The decisions of the Courts conflict with the Code of Federal Regulations, United States Code, Sutherlands Rules of Statutory Construction, and the Constitution of the United States.

Respectfully submitted,

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Petitioner, pro se

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Petitioner, pro se

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Dated: This 18th day of August, 2000

App. 1

NOTE: This disposition is not citable as precedent. It is public record. The disposition will appear in tables published periodically.

United States Court of Appeals
For the Third Circuit

99-5499

STEVEN J. LIDDANE; JEAN LIDDANE, Appellants

v.

COMMISSIONER OF INTERNAL REVENUE

Submitted For Possible Summary Action Under Third Circuit L.A.R. 27.4 and I.O.P. 10.6, November 24, 1999

Before: SLOVITER, MANSMANN and GREENBERG, Circuit Judges.

(Filed January 14, 2000)

OPINION

PER CURIAM,

Steven J. Jean L. Liddane appeal the United States Tax Court's Order granting summary judgment in favor of the Commissioner of Internal Revenue. For the reasons stated below, we find that the Court of Appeals has juris-

diction to consider the matter, and we will affirm the decision of the Tax Court.

On April 24, 1996, the Internal Revenue Service sent appellants a notice of deficiency, claiming that appellants owed $5,019.00 in deficient income taxes, $1,255.00 for late filing fees, and $1,004.00 for negligence in filing for tax year 1992. See 26 U.S.C. §§§ 1; 6651(a)(1); 6662. Appellants thereafter filed a petition in the United States Tax Court to challenge the IRS's deficiency determination and additions to tax liability. Both parties moved for summary judgment and appellee moved to impose a penalty under 26 U.S.C. § 6673.[1] Appellants argued in their trial brief, and subsequently at a hearing, that the Internal Revenue Code does not define income, that income tax is voluntary and appellants simply choose not to participate and that the Internal Revenue Code does not impose tax liability on individual human beings. The Tax Court granted summary fudgment in favor of the IRS, ordered appellants to pay the deficient taxes and additions to tax, and imposed a penalty of $2,500.00 under 26 U.S.C. § 6673 for instituting a frivolous or groundless proceeding. In support of his ruling, the Tax Judge filed a seventeen-page opinion explaining why appellants' position lacks merit.

Appellants filed a notice of appeal, which the Tax Court forwarded to the United States Court of Appeals for the Ninth Circuit because appellants currently reside in the state of Oregon. The Ninth Circuit transferred the matter to the Third Circuit because appellants resided in the state of New Jersey at the time they filed their petition with the Tax Court. Appellees filed a Motion for Summary Affirmance with this Court and appellants filed a timely response.

We begin by briefly addressing the issues of jurisdiction and venue. The Court of Appeals has jurisdiction pursuant to 26 U.S.C. § 7482(a). Because appellants filed their notice of appeal within 90 days after the entry of judg-

ment, as provided by Fed. R. App. P. 13, the appeal was timely filed. Appellants argue in their brief to this Court that venue is proper in the Ninth Circuit because they reside in Oregon. In support of their position, they cite 26 U. S.C. § 7482(b)(1)(A), which states that decisions of the United States Tax Court "may be reviewed by the United States court of appeals for the circuit in which is located--(A) in the case of a petitioner seeking redetermination of tax liability other than a corporation, the legal residence of the petitioner." Under this provision, however, "the legal residence ... shall be determined as of the time the petition seeking redetermination of tax liability was filed with the Tax Court." 26 U.S.C. § 7482(b)(1). It is undisputed that appellants resided in New Jersey at the time that they filed their petition with the Tax Court. Accordingly, the statute makes clear that the Third Circuit is the appropriate forum to review the Tax Court's decision.

We exercise plenary review over the Tax Court's construction and application of the Internal Revenue Code. National Starch and Chem. Corp. v. Commissioner, 918 F.2d 426 (1990), aff'd Indopco, Inc. v. Commissioner, 112 S. Ct. 1039 (1992), Appellants' arguments that wages are not income and that income taxes are voluntary require little discussion. It is well settled that wages are income. See United States v. Connor, 898 F.2d 942 (3d Cir. 1990); Wilcox v. Commissioner, 848 F.2d 1007 (9th Cir. 1988). It is also well settled that paying income taxes is not voluntary. Wilcox, 848 F.2d at 1008 (citing Carter v. Commissioner, 784 F.2d 1006, 1009 (9th Cir. 1986)).

Appellants' argument that the Internal Revenue Code does not define income or impose income tax liability on individuals is also meritless. 26 U.S.C. § 1 clearly imposes income tax liability on individuals. 26 U.S.C. § 63 defines taxable income generally as gross income minus deductions, and 26 U.S.C. § 61 defines gross income as "all income from whatever source derived," and specifically in-

cludes "compensation for services," which includes wages. Connor, 898 F.2d at 943.

In their response to appellees' motion for summary affirmance, appellants object primarily to the imposition of a penalty under 26 U.S.C. § 6673. They argue that § 6673 is inapplicable to them because of the definition of "person" in 26 U.S.C. § 6671.[2] We disagree. Regardless of the definition of "person" under § 6671, § 6673 unambiguously authorizes the Tax Court to use its discretion in imposing penalties upon "taxpayers." Therefore, § 6673 is applicable to individual taxpayers. See Sauers v. Commissioner, 771 F.2d 64 (3d Cir. 1985); Page v. Commissioner, 58 F.3d 1342 (8th Cir. 1995); Fox v. Commissioner, 969 F.2d 951 (10th Cir. 1992); Wilcox v. Commissioner, 848 F.2d 1007 (9th Cir. 1988). Accordingly, we find that § 6673 may be applied to appellants.

We review the Tax Court's imposition of a penalty under 26 U.S.C. § 6673 for abuse of discretion. Sauers v. Commissioner, 771 F.2d 64 (3d Cir. 1985). Prior to trial, appellees wrote to appellants, warning them that they intended to file a motion for a § 6673 penalty if appellants continued to assert their arguments n the Tax Court. Appellees also provided appellants with copies of three Tax Court cases in which arguments similar to appellants' had been rejected and § 6673 penalties imposed.

After receiving both parties' trial memoranda, the Tax Court held a hearing. At this hearing, the judge told appellants that their argument had no merit and provided them with copies of Cocozza v. Commissioner, T.C. Memo. 1997-305, in which a § 6673 penalty had been imposed against the taxpayer because of the frivolousness of the taxpayer's arguments. The court then ordered a briefing schedule, found that appellants' 52-page brief added "nothing of substance," and granted appellees' mothion for summary judgment and motion to impose a penalty under § 6673. In light of the numberous opportunities that the

Tax Court provided appellants to withdraw their petition and to pay their deficient taxes and addtions to tax, we cannot say that the Tax Court abused its discretion in imposing the penalty under 26 U.S.C. § 6673.

Because we conclude that the Tax Court correctly interpreted the Internal Revenue Code and did not abuse its discretion in imposing sanctions on appellants for instituting a frivolous proceeding, we will affirm the Tax Court's ruling.

United States Court of Appeals for the Third Circuit

JUDGMENT

This cause came on to be heard on the record from the United States Tax Court. On consideration whereof, it is now here

ORDERED AND ADJUDGED by this Court that the Tax Court's Order entered October 15, 1998 is hereby affirmed. All of the above in accordance with the Opinion of the Court.

FOR THE COURT,

P. Douglas Sisk

Clerk

Dated: January 14, 2000

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Note: This judgment is not citable as precedent. It is a public record.

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App. 6

T.C. Memo. 1998-259

UNITED STATES TAX COURT

STEVEN J. AND JEAN L. LIDDANE, Petitioners
v.
COMMISSIONER OF INTERNAL REVENUE, Respondent

Docket No. 15738-96.

Filed July 14, 1998.

Steven J. and Jean L. Liddane, pro sese.

Gerald W. Douglas, for respondent.

MEMORANDUM OPINION

BEGHE, Judge: This case is before the Court on cross- motions for summary judgment under Rule 121[1] and respondent's motion to impose a penalty under section 6673. Respondent determined a deficiency of $10,613 in petitioners' 1992 Federal income tax, an addition to tax of $1,255 under section 6651(a)

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[1] All Rule references are to the Tax Court Rules of Practice and Procedure, and all section references are to the Internal Revenue Code in effect for the year in issue.

for late filing, and an accuracy-related penalty under section 6662 for negligence.

Background

Petitioners resided in Lebanon, New Jersey, when they filed their petition. Petitioners filed responses to respondent's request for admissions, and the parties filed a stipulation of facts.

During 1992, petitioner Steven J. Liddane (petitioner) was employed by Transaero Corp., from which he received wages of $65,128 on which Federal income tax of $5,595 was withheld. Petitioner Jean L. Liddane is a housewife. Petitioners did not file a timely 1992 Federal income tax return, and the omission came to respondent's attention. In July 1994, petitioners received respondent's Form CP-516 notice, stating that, in order to receive a refund of the previous year's withholding credit, petitioners needed to submit a return. On December 6, 1994, the Brookhaven Service Center received a Form 1040, U.S. Individual Income Tax Return, signed by petitioners, on which they displayed their Social Security numbers in the appropriate boxes and claimed joint return filing status. The return showed zeros on lines 7 through 23, line 52, and line 64, on which items of gross income, adjusted gross income, and "the AMOUNT YOU OWE", respectively, are to be reported. Petitioners left the return blank in all other respects; they claimed no refund of tax withheld from the wages of $65,128 shown on Form W-2 and did not attach Form W-2 to the return.

On April 24, 1996, respondent mailed a statutory notice of deficiency to petitioners, determining that petitioners had income of $65,128 from wages, and $20 from interest that respondent later conceded, applying the personal exemption and standard deduction amounts to arrive at taxable income, giving petitioners credit for the tax withheld from petitioner's wages, computing their tax liability

by affording them joint filing status, and showing a balance due or underpayment of $5,019 and the above-described additions.

On July 22, 1996, petitioners. timely filed their petition with this Court, disputing the unpaid portion of the deficiency and the additions on the ground that "We do not believe we owe the extra amount due above for this tax year". On October 23, 1996, petitioner sent an Internal Revenue Service (IRS) Appeals officer a letter containing three single-spaced pages of text that petitioner asked to have treated as "an integral part" of petitioners' return. This letter explains that petitioners filed the return in order to avoid criminal liability as nonfilers; it sets forth a series of canned arguments, accompanied by numerous citations, that petitioners may have regarded as fresh and persuasive when they came to petitioners' attention, but which the Court for the most part regards as timeworn, tired, tax protester rhetoric. The letter also asserts that the Internal Revenue Code fails to define the term "income", that the income tax is "voluntary" and that petitioners do not choose to participate, and that the Code does not impose a liability for income tax on individual human beings, as opposed to "persons", a term that primarily connotes, in petitioners, view, artificial legal entities such as corporations. On August 29, 1996, respondent timely filed an answer that put the case at issue.

On May 6, 1997, the Court served its notice of trial, with standing pretrial order attached, calendaring the case for the Court's October 14, 1997, trial session to be held in New York City. On July 30, 1997, respondent filed a request for admissions, and on September 2, 1997, filed a motion to compel production of documents and a motion for summary judgment, each of which had been served on petitioners. On September 18, 1997, the Court received and filed, as petitioners, response to respondent's motion for summary judgment, petitioner's letter stating that he had moved with

his family to Oregon to take new employment. The Court thereupon denied respondent's motions without prejudice, vacated the deemed admissions (petitioners later responded timely to the requests for admission), changed petitioners, address on the Court's records, retained jurisdiction, and set the case for trial at the Court's March 16, 1998, Portland, Oregon, trial session.

On March 2, 1998, respondent's and petitioners, trial memoranda were received by the Court. In due course, they were filed as part of the record in this case. Petitioners' trial memorandum contains an index of citations of more than 60 authorities that includes, in addition to the Internal Revenue Code, IRS Publication 17, the 1992 instructions for Form 1040, Bouvier's Law Dictionary, 48 American Jurisprudence, 5 State court opinions, 30 opinions of the U.S. Supreme Court, and 21 opinions of lower Federal courts. Petitioners' trial memorandum charges respondent's notice of deficiency with failure to cite legal authority in support of its determinations, including the failure to explain, in support of their objection to the additions, why filing income tax returns is "mandatory".

At the hearing of this case, the Court provided respondent's counsel and petitioners with copies of the Court's opinion in Cocozza v. Commissioner, T.C. Memo. 1997-305, with citations of other such cases decided by the Court, including Talmage v. Commissioner, T.C. Memo. 1996-114, affd. without published opinion 101 P.3d 695 (4th Cir. 1996). Respondent's counsel informed the Court that he had already provided petitioners with a copy of the Court's opinion in Talmage, as well as copies of the Court's opinions in Greenberg v. Commissioner, 73 T.C. 806 (1980), and Steele v. Commissioner, T.C. Memo. 1997-307, as evidenced by his letter to petitioners of February 26, 1998, annexed as an exhibit to respondent's trial memorandum. In each of those cases, the Court imposed a penalty against the taxpayer under section 6673 because of the frivolousness of the

taxpayer's arguments. That letter also notified petitioners that respondent intended to file a motion for a penalty under section 6673 'in an amount of at least $5,000.00, if you continue to assert your previously stated objections to paying taxes" because "As you can see by reading these cases, your objections to paying taxes are clearly frivolous and, even more to the point, have been repeatedly rejected by the Courts."

At the hearing, the Court explained to petitioners that their position has no merit. The Court told petitioners that petitioner's letter of October 23, 1996, would not be treated as part of their return, but would be deemed a protest filed with the Appeals officer. Although the facts of the case had been fully stipulated, petitioners had a prepared statement that they wished to read into the record. The Court suggested that it would be more efficient to file the statement as a brief. The parties thereupon each moved for summary judgment, and respondent filed a written motion for a penalty under section 6673 "in an amount not less than $10,000".

The Court ordered a seriatim briefing-schedule, with petitioners to lead off, as they requested. After an extension of time, petitioners filed a 52-page brief, with more than 130 citations of statutes, regulations, cases, and other materials, partially typed but largely handwritten, with three exhibits attached, consisting of the IRS Mission Statement, the White House press release accompanying the President's signature of H.R. 1226, the Taxpayer Browsing Protection Act, and an excerpt from 1953 hearings before the Ways and Means Committee, consisting of a portion of the testimony of Dwight E. Avis, Head, Alcohol and Tobacco Tax Division, Bureau of Internal Revenue, in which he stated, among other things: "Your income tax is 100 percent voluntary tax and your liquor tax is 100 percent enforced tax". Upon receipt of petitioners, brief, the Court issued an order informing the parties that they need not file

additional briefs and that the case would be deemed fully submitted.

Discussion

Petitioners, brief, although much longer, by reason of the inclusion of copious quotations and additional citations, than the letter to the Appeals officer, adds nothing of substance to what was said in the letter. In these circumstances, our recent comments in VonDyl v. Commissioner, T.C. Memo. 1998-120, are exactly to the point:

> Petitioner, by selectively analyzing statutes, regulations, and case precedent out of context, has reached the conclusion that amounts he received from any and all sources do not constitute income. Petitioner, following in the footsteps of numerous others who have unsuccessfully attempted to rationalize a way to avoid paying Federal income tax, must also fail. We find petitioner's arguments to be either wholly without merit and not worthy of further analysis and/or previously addressed by this and other courts. See, for example, opinions addressing the question of whether compensation for labor is not subject to tax, such as Funk v. Commissioner, 687 F.2d 264 (8th Cir. 1982), affg. T.C. Memo. 1981-506; Broughton v. United States, 632 F.2d 706, 707 (8th Cir. 1980); Hayward v. Day, 619 F.2d 716, 717 (8th Cir. 1980); Rowlee v. Commissioner, 80 T.C. 1111, 1120 (1983). Further, we are not obligated to exhaustively review and/or rebut petitioner's misguided contentions. Crain v. Commissioner, 737 F.2d 1417 (5th Cir. 1984).
>
> Accordingly, we sustain respondent's

determination

***

In an effort to help petitioners understand why and how their selective reading of dicta in old cases is at odds with more recent Supreme Court opinions that set forth the current correct approach to interpreting and applying the Internal Revenue Code that is followed by the Federal courts, we make the following additional observations.

Justice Holmes not only said, in Compania General de Tabacos de Fili-pinas v. Collector, 275 U.S. 87, 100 (1927), that "Taxes are what we pay for civilized society", but in his article, "The Path of the Law", 10 Harv. L. Rev. 457, 461 (1897), that "The prophecies of what the courts will do in fact, and nothing more pretentious, are what I mean by the law", and "a legal duty so called is nothing but a prediction that if a man does or omits certain things he will be made to suffer in this or that way by judgment of the court". Id. at 458. Although these formulations may be somewhat simplistic, they have "a valid core", Reich v. Continental Cas. Co.,33 F.3d 754, 757 (7th Cir. 1994). Our opinion in Talmage v. Commissioner, supra, cites numerous other cases, in addition to those cited in VonDyl v. Commissioner, supra, in which this Court and the Courts of Appeals have invariably rejected arguments that wages are not income for the purposes of the income tax law. The information given to petitioners before and at the hearing should have made clear to petitioners that their case is a sure loser.

The fact that "income" is not a defined term in the Internal Revenue Code is of no moment. The lack of a definition does not make the 16th Amendment or the Internal Revenue Code inoperative. As Judge Learned Hand stated in United States v. Oregon-Washington R.R. Nav. Co., 251 P. 211, 212 (2d Cir. 1918), the meaning of the word "income" is "not to be found in its bare etymological derivation. Its meaning is rather to be gathered from the implicit assump-

tions of its use in common speech". The term "income" as used in the 16th Amendment and in the Internal Revenue Code "carries the meaning which an intelligent layman, not an economist or a lawyer, would ascribe to it". Magill, Taxable Income 19 (1945 rev.). Although there was a time in the early days of the Federal tax laws when the Supreme Court regarded the problem as one that could be solved by arriving at an approved definition, which, incidentally, early on included income derived from labor, including salaries, wages, or compensation,[2] the current view, as expressed on behalf of the Supreme Court by Justice Holmes in United States v. Kirby Lumber Co., 284 U.S. 1, 3 (1931), is: "We see nothing to be gained by the discussion of judicial definitions. The defendant in error [the taxpayer] has realized within the year an accession to income, if we take words in their plain popular meaning". See also Reading v. Commissioner, 70 T.C. 730, 733 (1978), affd. per curiam 614 F.2d 159 (8th Cir. 1980).

What petitioners and others who make the misguided arguments that the Court has waded through in this case have failed or refused to recognize, and must realize and understand, is that the courts no longer pay any attention to the metaphysical logic chopping and nit-picking of dicta from old cases about what is "income". The correct view, which all Federal courts currently follow and apply, was made clear by Chief Justice Warren in the more recent opinions of the Supreme Court in Commissioner v. Glenshaw Glass Co., 348 U.S. 426 (1955), and General Am. Investors Co. v. Commissioner, 348 U.S. 434 (1955), that the receipts in question in those cases were included in taxable income under both the 1939 and 1954 Internal Revenue

[2] The classic definition was worked out in a series of cases commencing with Stratton's Independence, Ltd. v. Howbert, 231 U.S. 399, 415 (1913), through Doyle v. Mitchell Bros. Co., 247 U.S. 179, 185 (1918), and culminating in Eisner v. Macomber, 252 U.S. 189, 207 (1920).

Codes. For example, in Commissioner v. Glenshaw Glass Co., supra at 432-433: "We would do violence to the plain meaning of the statute and restrict a clear legislative attempt to *** bear upon all receipts constitutionally taxable were we to say that the payments in question here are not gross income." And again, in General Am. Investors Co. v. Commissioner, supra at 436: "In accordance with the legislative design to reach all gain constitutionally taxable unless specifically excluded, we conclude that the petitioner is liable for the tax and the judgment is affirmed."

These words are also "dicta", as are the words of the old Supreme Court opinions and other opinions and sources that petitioners selectively quote out of context. Dicta is a word that lawyers and judges use to refer to explanations or comments in a judicial opinion that are not necessary to the holding or result that is the court's actual decision. But, as explained in Reich v. Continental Cas. Co., supra at 757, in which the Court of Appeals applied and followed the dicta in a recent Supreme Court opinion on another subject:

> federal law is for all practical purposes what the Supreme Court says it is. When the Court's view is embodied in a holding, the Court's reluctance to overrule its precedents enables a confident prediction that that holding is "the law." When the view is embodied in a dictum, prediction cannot be made with the same confidence. But where it is a recent dictum that considers all the relevant considerations and adumbrates an unmistakable conclusion, it would be reckless to think the Court likely to adopt a contrary view in the near future. In such a case the dictum provides the best, though not an infallible guide to what the law is, and it will ordinarily be the duty of a lower court to be guided by it.

So much more so in the case at hand, as in the countless other cases in which misguided taxpayers such as petitioners have repeated the fruitless arguments that the income tax laws are ineffective or inapplicable in accomplishing their intended objective of raising governmental revenue from individuals who receive wage, salary, or other compensation income. The invariable practice of this Court and the Courts of Appeals in rejecting those arguments confirms that petitioners' arguments are frivolous. By enacting and amending the Internal Revenue Code, Congress, the people's elected representatives, has accomplished the purpose of providing the primary means of financing the costs of the Federal Government. This is the system under which both individuals and corporations will be required to pay their shares of the burden, at least until such time as Congress decides to repeal the income tax and try another way to raise the necessary revenue.

Petitioners' descriptions of the Federal income tax as a voluntary system that they and others who don't like to pay taxes can elect to participate in or not as they choose is based on a gross misunderstanding that can only be attributed to willful "obtuseness". See Coleman v. Commissioner, 791 F.2d 68, 72 (7th Cir. 1986) (quoted in Talmage v. Commissioner, T.C. Memo. 1996- 144). That misunderstanding arises from a false distinction between the way in which some taxes are determined and collected without the filing of a return, as by stamp or at the point of sale, and our self-assessment system of filing income tax returns in which taxpayers are required in the first instance to compute and report to the Government the amount of their taxable income and the resulting tax liability. But, as Judge Learned Hand pointed out in his famous aphorism about income tax avoidance in Commissioner v. Newman, 159 P.2d 848, 850-851 (2d Cir. 1947):

> Over and over again courts have said that there is nothing sinister in so arranging one's

> affairs as to keep taxes as low as possible. Everybody does so, rich or poor; and all do right, for nobody owes any public duty to pay more than the law demands: taxes are enforced exactions, not voluntary contributions. To demand more in the name of morals is mere cant. [Emphasis supplied.]

Again, the notion that the tax on the income from employment or labor of a human being is an unconstitutional tax on his existence, and that only artificial entities such as corporations, formed and continued by State action, can be subjected to income tax, is, in this day and age, even when alternative approaches to raising revenue are receiving legislative consideration, too quaint to require extended discussion.. In this connection, petitioners' notion that common speech restricts the term "person" to artificial persons is just wrong. "Person" is the generic term; it usually refers to human beings; when it is extended to include other entities, such as corporations, they are included in the definition of person and, to provide clarity and contrast, the term "individual" is applied to human beings.

Petitioners are "individuals" within the meaning of the Internal Revenue Code. The fact that the term "individual" is not defined in the Internal Revenue Code is also of no moment. As previously stated, words in the Internal Revenue Code have their commonly accepted meanings as used in common speech.

Petitioners display similar obtuseness in asserting that the words of the Internal Revenue Code do not actually impose income tax liability on them. Petitioners have been led astray by whoever has sold them the bill of goods that they have so laboriously written out and filed as their brief. All that is required is actually to read the Internal Revenue Code. Section 1, entitled "Tax Imposed", provides in subsection (a):

There is hereby imposed on the taxable income of--

(1) every married individual * * * who makes a single return jointly with his spouse under section 6013 ***

******

a tax determined in accordance with the following table:

****

If taxable income is:	The tax is:
*******	
Over $32,450 but not over $78,400	$4,867.50, -plus 28% of the excess over $32,450.

Married individuals who file separate returns or no return suffer tax liability at the higher rate of 31 percent on much the same amount of taxable income under section 1(d).

Section 61(a) defines "gross income" as "all income from whatever source derived", the formulation that Chief Justice Warren said, on behalf of the Supreme Court, in Commissioner v. Glenshaw Glass Co., 348 U.S. 426 (1955), and General Am. Investors Co. v. Commissioner, 348 U.S. 434 (1955), was all encompassing, and which specifically includes, in paragraph (1), "Compensation for services". Section 62 defines the intermediate term "adjusted gross income" minus certain defined deductions. Section 63(b) defines "taxable income" for individuals who do not itemize their deductions, as petitioners failed to do on their return document (and rejected the opportunity that we afforded them to rectify their omission), as meaning "adjusted gross income, minus-- (1) the standard deduction, and (2) the deduction for personal exemptions provided in section 151." The standard deduction for 1992 is defined by section 63(c) as $5,000 in the case of a joint return, and the personal exemption amount for 1992 is $4,600 for two individuals.

Finally, civil tax liabilities are not criminal punishment. The requirement that the Government prove liability beyond a reasonable doubt, the standard applied in criminal cases, does not apply to civil tax liabilities. In any event, the burden of proof plays no role in this case. No facts are in dispute. Petitioners, stipulation that petitioner received wages of $65,128 is all that is needed to decide this case in respondent's favor.

Respondent's determination is sustained with respect to petitioner's wage income from Transaero Corp. We will deny petitioners' motion for summary judgment and grant respondent's motion. To give effect to respondent's concession on the $20 of interest, a computation under Rule 155 will be required.

Because petitioners, brief does not address the late-filing addition and the negligence penalty, we might have deemed petitioners to have conceded them, once we rejected petitioners' frivolous arguments on the merits of the tax liability. However, petitioner's trial memorandum, which was filed as part of the record in this case, takes the position that the section 6651(a) late filing addition and the section 6662 negligence penalty cannot be imposed because of respondent's failure to persuade petitioners, by reason of their "voluntary" argument, that there is a mandatory filing requirement. Inasmuch as we have rejected petitioners' argument on that score, their arguments against the imposition of the addition and penalty cannot stand. Respondent's determinations are clearly correct and must be sustained. Petitioners filed their return more than a year and a half late. Their return position was inexcusably groundless, and their arguments have been clearly frivolous. As such, they evidence petitioners, continuing failure to make any reasonable attempt to comply with the applicable provisions of the Internal Revenue Code. The addition and penalty clearly apply to the underpayment to be determined in the Rule 155 computation.

We now turn to respondent's motion to impose a penalty under section 6673. Petitioners received a warning that respondent would move for a penalty under section 6673 because their position was groundless and their arguments frivolous. Respondent furnished petitioners with copies of similar cases, in which, after upholding the Commissioner's determinations, the Court imposed such a penalty on the taxpayers and in which the Court's decision to impose a penalty was upheld by the Courts of Appeals. Petitioners were given ample opportunity to recede in the face of the evidence provided by the Court and respondent of the overwhelming likelihood, amounting to certainty, that they would lose their case and that a penalty would be imposed if they persisted in their misguided time- and resource-consuming course of action. Petitioners, position in this case has been groundless and their arguments frivolous from the time they first decided not to file a return, then filed a return taking a clearly groundless position, through the times of filing of their petition and the protest letter with its frivolous arguments that they sought to incorporate into their return, through the filing of their trial memorandum and their actions at the hearing, and concluding with their brief, all, as the Court of Appeals said in Coleman v. Commissioner, 791 F.2d at 71, "contrary to established law and unsupported by a reasoned, colorable argument for change in the law."

In these circumstances, we will exercise our discretion under section 6673(a)(1) and require petitioners, in addition to the underpayment of tax, the late filing addition, and the negligence penalty, to pay a penalty to the United States in the amount of $2,500.

In view of the foregoing,

An appropriate order will be issued, and decision will be entered under Rule 155.

App. 20

UNITED STATES TAX COURT

Washington, D.C. 20217

Docket No. 15738-96

STEVEN J. LIDDANE and JEAN L. LIDDANE, Petitioners,

V.

COMMISSIONER OF INTERNAL REVENUE, Respondent.

ORDER

On March 23, 1998, at the Court's Portland, Oregon trial session, this case was submitted to the Court for decision: respondent filed a Motion for Damages under I.R.C. Section 6673, requesting the Court to impose a penalty on petitioners of not less than $10,000; respondent and petitioners each orally moved for summary judgment; and the Court took the parties' motions under advisement. On June 19, 1998, after reviewing petitioners' June 11, 1998 opening brief and the record in this case, the Court ordered that respondent and petitioners need not file any additional briefs" and deemed the case "fully submitted in all respects".

In our Memorandum Opinion (T.C. Memo. 1998-259) filed today, the Court stated that, with respect to the parties' cross motions for summary judgment, the Court would deny petitioners' motion and grant respondent's motion. With respect to respondent's motion to impose a penalty under I.R.C. § 6673, the Court stated that it would exercise its "discretion under section 6673(a)(1) and require petitioners, in addition to the underpayment of tax, the late fil-

ing addition, and the negligence penalty, to pay a penalty to the United States in the amount of $2,500", which will be reflected in a decision entered under Rule 155, Tax Court Rules of Practice and Procedure.. Accordingly, it is

ORDERED that petitioners, oral motion for summary judgment is denied. It is further

ORDERED that respondent's oral motion for summary judgment is granted. it is further

ORDERED that respondent's Motion for Damages under I.R.C. § 6673 is granted in that a penalty in the amount of $2,500, pursuant to I.R.C. § 6673, is hereby awarded to the United States, and an award in that amount shall be included in the decision entered in this case.

Renato Beghi

Judge

Dated: Washington, D.C.

July 14, 1998

App. 22

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Case No. 99-5499

STEVEN J. LIDDANE; JEAN L. LIDDANE,
Petitioners-Appellants

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent-Appellee

PETITION FOR PANEL REHEARING OF APPEAL OF THE ABOVE CAPTIONED CASE IN THE COURT OF APPEALS FOR THE THIRD CIRCUIT

STATEMENT

Steven J. Liddane and Jean L. Liddane, Appellants herein, file this petition for panel rehearing in accordance with Federal Rules of Appellate Procedure 40, Third Circuit IOP Chapter 8 and Third Circuit LAR 40.0; in response to the Court's Opinion filed January 14, 2000. Appellants respectfully petition this Court for panel rehearing because of the belief that the Court has overlooked key points of the

United States Code (USC), Code of Federal Regulations (CFR), United States Supreme Court findings and words of the United States Constitution, in its rendered Opinion (copy attached hereto), for reasons made clear in the following discussion.

DISCUSSION

The Court of Appeals For The Third Circuit's Opinion states the following:

> 1) "It is well settled that wages are income."
>
> 2) "Appellants' argument that the Internal Revenue Code does not define income or impose income tax liability on individuals is also meritless."
>
> 3) "Regardless of the definition of 'person' under Section 6671, Section 6673 unambiguously authorizes the Tax Court to use its discretion in imposing penalties upon 'taxpayers'."

It is our belief that, as the result of our studies of the Internal Revenue Code and governing statutes, these are erroneous statements.

To enact federal laws, Congress passes statutes through the legislative process, which are contained in the "50" titles of the United States Code. A federal agency then has the duty (assigned by Congress) to implement and enforce the statutes by writing and publishing regulations,

which explain that agency's interpretation of the statutes, as well as setting the rules which govern how the agency will enforce the statutes. The regulations, when published in the Federal Register, are the official notice to the public of what the law requires. All regulations must adhere (coincide) with the United States Code, which in turn must adhere (coincide) with Constitutional law.

In our system of written law, Congress may use a term to mean almost anything, as long as the law itself defines that meaning. When the written law explains the meaning of a term used in the law, standard English usage becomes irrelevant. For example, by the definition of 26 U. S.C. Section 7701(a)(1), the term "person" includes estates, companies and corporations. While no one would describe Wal-Mart as a "person" in everyday conversation, Wal-Mart is a "person" under federal tax law. The legal use of a term is often significantly different from basic English, and therefore reading one section of the law alone can be very misleading. It is the language of the law we are concerned with here in this case.

In Sutherland's Rules of Statutory Construction 66.01, it states: "...it is a well settled rule that laws are to be strictly construed...Strict Construction is a way to assure that no taxes be enacted except by legislative authority." And at 66.03 it states: "The obligation to pay taxes arises only by force of legislative action."

This is backed up by the following: "In the interpretation of statutes levying taxes, it is the established rule not to extend their provisions by implication beyond the clear impart of language used, or to enlarge their operation so as to embrace matters not specifically pointed out. In the case

of doubt they are construed most strongly against the government and in favor of the citizen." Gould v. Gould, 245 U. S. 151. Furthermore, "The Secretary of Treasury is bound by law, and although in the exercise of his discretion he may adopt necessary forms and modes of giving effect to the law, neither he nor those who act under him can dispense with or alter any of its provisions." Tracy v. Swartwout, 10 Pet (US) 80, 9 L ed 354.

"Gross Income" is defined in 26 U.S.C. Section 61 as "all income from whatever source derived." For the specifics about "income from sources" (emphasis added), the reader is repeatedly referred to Section 861 and following of the statutes and the related regulations. In the full version of Title 26 U.S.C. (with all notes and amendments), Section 61 itself has the following cross-reference: "Income from Sources - Within the United States, see Section 861 of this title. Without the United States, see Section 862 of this title." In addition, the indexes of the United States Code (although they vary somewhat in the exact wording) have entries such as: "Income tax Sources of income, Determination, 26 Section 861 et seq..., within the U.S., 26 Section 861."Section 861 itself is predictably titled "Income from sources within the United States,". This section is the first section of Subchapter N of the Code, entitled "Tax based on income from sources within or without the United States." This is the only section in the Index relating to income from sources within the United States. As mentioned before, the statutes passed by Congress are interpreted and implemented by regulations published in the Code of Federal Regulations by the Secretary of the Treasury and the IRS must abide by these regulations.

Considering we are allowed only 15 pages for this petition, we will leave it up to the Court to read the text of

Section 861 in its entirety. It is explicitly clear and relevant to this case. You will find that at no time do we fall into any of the categories listed in Section 861 or Subchapter N, which in turn means we do not fall under Section 61 of the IRC nor Section 63 or Section 1. Nor do any of the aforementioned "sources" of income apply to United States citizens living and working within the United States. The Court is already aware that the Internal Revenue Code is adopted from the Code of Federal Regulations, which in turn comes from the United States Code, which must adhere to Constitutional law. Constitutional law is the LAW OF THIS LAND.

Consider the following: "The purpose of the Corporation Tax Act of August 5, 1909 is not to tax property as such, or the mere conversion of property, but to tax the conduct of the business of corporations organized for profit by a measure based upon the gainful returns from their business operations and property from the time the Act took effect...The Act employs the term "income" in its natural and obvious sense, as importing something distinct from principal or capital, and conveying the idea of gain or increase arising from corporate activities." Doyle v. Mitchell, 247 U. S. 179 (1918). Even before Title 26 or Title 27 were written, it was established here what the term "income" referred to. Further backing up the validity of the Code of Federal Regulations and United States Code and the relevance of the Constitution.

The 10th Amendment to the Constitution clearly states that Congress has legal power over only those few matters which the Constitution specifically puts under federal jurisdiction. Within the 50 States, Congress has control over only those matters listed in Article I, Section 8 of the Constitution. This limitation was recently demonstrated by

the "United States v. Lopez" case in 1995, in which the Supreme Court threw out the "Gun Free School Zone" law (18 USC § 922(q)) as unconstitutional, on the grounds that it was outside of Congress' enumerated powers described in Article I, Section 8. Not only did the court say this, but the lawyers on the *other* side tried to argue that the law was about regulating interstate commerce (which Article I, Section 8 puts under federal jurisdiction), demonstrating that they agreed that the law had to be based on something in Article I, Section 8.

Article I, Section 8 does include the "power to lay and collect taxes", but does not say what may be taxed by Congress.

Brief mention should be made of the 16th Amendment to the Constitution, since there is a common but erroneous belief that the 16th Amendment expanded Congress' power to tax incomes. The purpose of the 16th Amendment, according to the U.S. Supreme Court in Brushaber v. Union Pacific Railroad, 240 U.S. 1, and again in Stanton v. Baltic Mining Co., 249 U.S. 112 (1916), and according to the Secretary of the Treasury in Treasury Decision 2303, was to make clear that the income tax is, and has always been, an indirect "excise" tax.

"The Sixteenth Amendment. The provisions of the Sixteenth Amendment conferred no new power of taxation, but simply prohibited (Congress' original power to tax incomes) from being taken out of the category of indirect taxation, to which it inherently belonged, and being placed in the category of direct taxation subject to apportionment." [Treasury Decision 2303].

Congress' taxing jurisdiction was therefore not at all affected by the 16th Amendment.

The Brushaber v. Union Pacific Railroad, 240 U.S. 1, case decided January 24, 1916 (mentioned in Treasury Decision 2313) is often cited by the IRS as demonstrating that the income tax is Constitutional (which it is, because of its very limited legal application). What the IRS fails to mention, and what is not apparent from looking at the court's ruling in the case, is that the case concerned income from within the United States accruing to a nonresident alien, which is subject to the income tax. Treasury Decision 2313 makes this apparent.

"Under the decision of the Supreme Court of the United States in the case of Brushaber v. Union Pacific Railway Co., decided January 24, 1916, it is hereby held that income accruing to nonresident aliens in the form of interest from the bonds and dividends on the stock of domestic corporations is subject to the income tax imposed by the act of October 3, 1913." [Treasury Decision 2313]

Another legal resource, which demonstrates the true applicability of the "income tax", is the annotated index of the United States Code. While there are different versions which vary somewhat in exact wording, under *"Income tax, citizens,"* only things such as citizens *"living abroad"* or *"about to depart from U.S."* are listed.

Both the indexes and the contents of "Internal Revenue Bulletins" (which contain rulings and decisions by the IRS regarding interpretation of the law) reinforce the conclusions of this petition. For example, the 1957-1960 cumulative bulletin has nine listings under "Citizens," every one of which deals with citizens being *outside* of the United States. This same bulletin, under *"Income - Source,"* has 35 listings, all of which deal with specific issues related to *international* com-

merce, with one exception; and that exception again reinforces the significance of Part I of Subchapter N, and the related regulations. The bulletins show similar patterns year after year, from 1913 (when the basis of the current federal income tax was written) to the present.

In our Brief to Judge Beghe, a copy (Exhibit C) was included of the "Internal Revenue Investigation, Hearings Before a Subcommittee on Ways and Means, House of Representatives, Eighty-Third Congress, First Session on Administration of the Internal Revenue Laws, United States Government Printing Office, 1953, A Statement made by Mr. Dwight E. Avis, former head of the Alcohol, Tobacco, and Firearms Division, Bureau of the Internal Revenue." He states here, "Let me point this out now: Your income tax is 100 percent voluntary tax and your liquor tax is 100 percent enforced tax. Now, the situation is as different as night and day. Consequently, your same rules just will not apply..."

Judge Beghe never addressed this issue. Instead, Judge Beghe skipped over it as if it was not there. Also overlooked was our mention of 4 USCSC, 111, Victory Tax of 1942 to support the war. The Victory Tax clearly shows its voluntary origins. These are both issues which merit further review by the Court.

"Due process is violated when the government itself creates uncertainty in the law, you have the right to make a determination from reliable sources like the Supreme Court." U.S. v. Critzer, 498 F.2d 1160, 4th Cir. (1974).

"...keeping in mind the well settled rule that the citizen is exempt from taxation unless the same is imposed by clear and unequivocal language, and that, where the construction of the tax law is doubtful, the doubt is to be resolved in favor of those upon whom the tax is sought to be

laid." Spreckels Sugar Refining Co. v. McLain, 192 U.S. 397 (1903).

"Because of what appears to be a lawful command on the surface, many citizens, because of their respect for what only appears to be law, are cunningly coerced into waiving their rights due to ignorance." U.S. v. Minker, 350 U.S. 179 at 187.

"Decency, liberty and security alike demand that government officials be subject to the same rules of conduct that are commands of the citizens. In a government of laws, existence of government will be imperiled if it fails to obey the law scrupulously. Our government is the potent omnipresent teacher. For good or ill, it teaches the people by example, crime is contagious. If the government becomes a lawbreaker, it breeds contempt for law; it invites every man to be a law unto himself. It invites anarchy." Olmstead v. United States, 277 U.S. 438 (1982).

Considering the statements of fact and case citations presented herein, we believe that the Court of Appeals statements in its Opinion, as delineated in the beginning of this petition, are based on an erroneous and incomplete perception of our case. We believe the Tax Court has incorrectly interpreted the Internal Revenue Code, and its leading authority, the United States Code and Code of Federal Regulations, and has abused its discretion in imposing sanctions for frivolous proceedings.

CONCLUSION

As stated in your Opinion, the Court of Appeals for the Third Circuit exercises "plenary review over the Tax Court's construction and application of the Internal Revenue Code." Additionally, the Court of Appeals' broader powers under the Constitution grant it the ability to rule on

matters outside the jurisdiction of the Tax Court, to include judicial review of the interpretation of established federal law embodied in the United States Code and its rightful application in accordance with the Constitution, upon the citizens of the United States.

We are firm in our belief that the Commissioner of Internal Revenue and the United States Tax Court have erred in its application of the law as stated in Title 26 U.S. C., for reasons presented repeatedly in our previous papers to the Commissioner and Tax Court. The Commissioner has failed to state to us, in proper form, including a Notice of Deficiency, the specific statute making us liable for any tax, despite repeated requests. The U.S. Tax Court, with its tethered vision and inadequate jurisdictional authority, were equally handicapped in rendering an unbiased assessment and judgement of our of our original petition. Its limited jurisdiction, and hence inadequate review, stems partially from its original Congressional charter. Never the less, a majority of the facts and supporting cases presented in our brief went unmentioned, and presumably unread, in their filed decision.

We also wish to point out that the Clerk of the Court of Appeals for the Third Circuit did not inform us of a briefing schedule, as written in the "Information for Pro Se Litigants", sent to us on July 9, 1999. Without the opportunity of submitting our brief, we feel our arguments will not be fully understood by this Court. The arguments contained in this Petition, based on facts of law as defined above, are at the very minimum, we feel, adequate enough to cast sufficient doubt concerning the applicability and constitutional aspects of Title 26 U.S.C. in our case. We therefore pray upon the Court to rehear our case, appropriately presented in following brief by your instructions, for a decision in favor of the Appellants.

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Respectfully submitted,

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Dated: This 25th day of February, 2000

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 99-5499

STEVEN J. LIDDANE; JEAN L. LIDDANE,

Appellants

v.

COMMISSIONER OF INTERNAL REVENUE

Present: SLOVITER, MANSMANN and GREENBERG, Circuit Judges.

The petition for panel rehearing filed by appellants in the above entitled case having been submitted to the judges who participated in the decision of this court, and no judge who concurred in the decision having asked for rehearing, the petition for panel rehearing is denied.

BY THE COURT,

Carol Los Mansmann

Circuit Judge

DATED: March 14, 2000

LKJ/cc:JL
SL
CB
AD